IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 10TH APRIL 2007 / 20TH CHAITHRA 1929

Crl.MC.No. 1135 of 2007()

CMP.5543/2006 of JUDL.MAGISTRATE OF FIRST CLASS COURT, TALIPARAMBA

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PETITIONER:

M. KABEER, AGED 38 YEARS,
S/O. MOOSA,
FAZA QUARTERS,
KANNUKKARA, THANA P.O.,
KANNUR.

BY ADV. SRI.M.SASINDRAN
SRI.K.P.HARISH

RESPONDENTS:

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1. STATE – REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

2. P.P. MUHAMMEDKUNHI,
AGED 48 YEARS,
S/O. VENGODAN ABBAS,
PADINHARA PURAYIL HOUSE,
PILATHARA P.O,
CHERUTHAZHAM,
KANUR DISTRICT.

BY P.P. SRI. S.U. NAZAR.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 10/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1135 OF 2007

Dated this the 10th day of April, 2007

ORDER

The petitioner is the accused in a prosecution under Secs.406 and 420 of the IPC. Cognizance has been taken on the basis of a private complaint filed by the complainant. The petitioner has not appeared before the learned Magistrate so far. The learned Magistrate has issued coercive process to procure the presence of the petitioner. In these circumstances, the petitioner has come to this Court with a prayer that the proceedings against him may be quashed. Alternatively, it is prayed that the learned Magistrate may be directed under Sec.482 of the Cr.P.C. to release the petitioner on bail on the date of his surrender itself.

2. Though there is a contention that the prosecution has liable to be quashed under Sec.482 of the Cr.P.C., no serious attempt is made to press home that contention. I am

satisfied that it is not necessary to quash the proceedings by invoking the powers under Sec.482 of the Cr.P.C. Needless to say, the petitioner shall be at liberty to claim discharge under Sec.245(1) or 245(2) of the Cr.P.C. as the case may be.

3. The learned counsel for the petitioner submits that the petitioner is willing to surrender before the learned Magistrate. But the petitioner apprehends that his application for regular bail may not be considered by the learned Magistrate on merits in accordance with law and expeditiously. It is, in these circumstances, that the petitioner has come to this Court for a direction to the learned Magistrate to release him on bail when he appears before the learned Magistrate.

4. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate the circumstances under which he could not earlier appear before the learned Magistrate. I have no reason to assume that the learned Magistrate would not consider the petitioner's application for regular bail on merits in accordance with law and expeditiously. No special or specific directions appear to be necessary. Every court must do the same. Sufficient general directions on this aspect have already been issued in the decision

reported in **Alice George v. Deputy Superintendent of Police** (2003 (1) KLT 339).

5. In the result, this Crl.M.C. is dismissed; but with the observation that if the petitioner surrenders before the learned Magistrate and seeks bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself, unless compelling and exceptional reasons are there.

6. Hand over a copy of this order to the learned counsel for the petitioner.

Sd/-

(R. BASANT, JUDGE)

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//true copy//

P.S. to Judge